IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.20121 of 2000

Dated: 31-10-2007

Between:

M/s. Sree Anantha Lakshmi Textiles (P) Limited,
12-104/A, Industrial Area Road,
Tanuku – 534 211, West Godavari District,
rep. by its Executive Director,
Dr. Mullapudi Harischandra Prasad.

... Petitioner

and

1. The Secretary,
   Agricultural Market Committee,
   Tanuku,
   West Godavari District and another.

... Respondents

ORDER:

This writ petition is filed seeking to quash the order dated 26-07-2000 passed by the first respondent for the years 1994-95 to 1999-2000, or in the alternative quash the order dated 16-09-2000 passed by the second respondent, rejecting the revision petition filed by the petitioner for the assessment years 1994-95 to 1999-2000 under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short, 'the Act') and consequently direct the second respondent to hear the revision petition and dispose it of on merits.

2. Petitioner is a company and licensee under the Act and is engaged in the business of cotton and cotton yarn. It appears the first respondent issued a show cause notice prior to assessment proposing to levy market fee,
inter alia, on purchase of cotton from various other sources for the years 1997-98 and 1999-2000. After prolonged litigation, the objections filed by the petitioner on 17-05-2000 were rejected by the first respondent by his assessment order dated 26-07-2000 and directed the petitioner to pay market fee on disputed items for the years 1994-95 to 1998-99. Though a right of appeal, as provided for under Section 12(E) of the Act is available, petitioner has filed a revision before the Director of Marketing as provided for under Section 12(F) of the Act and the same was not entertained by the Director on the ground that the petitioner without exhausting the remedy of appeal provided for under Section 12(E) of the Act has approached the revisional authority. The said proceedings or communication is questioned in this writ petition.

3. A counter affidavit is filed on behalf of the respondents, wherein it is stated that against the orders of assessment passed by the competent authority, an appeal is provided for under Section 12(E) of the Act and as per sub-section (2) of Section 12(E) of the Act before preferring an appeal,
the market fee as fixed by the assessing authority shall be paid and no appeal shall be entertained until the said market fee is paid. As the payment of the market fee is a condition precedent to entertain the appeal,
the petitioner without exhausting the remedy of appeal has approached the revisional authority and the revisional authority is justified in rejecting the said revision.

4. Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

5. When an identical matter came up for debate before a Division Bench of this Court, learned Judges, vide order dated 31-08-2005 in W.P.No.19238 of 2005, have taken the view that a plain reading of

Section 16 of the Andhra Pradesh Tax on Professions, Trades, Callings and Employments Act, 1987 discloses that a revision petition lies even as against the order passed by the assessing authority and it is left open to the petitioner either to prefer an appeal or revision before the revisional authority. It is also observed in the said order that when the petitioner chooses to file a revision instead of an appeal, the revisional authority is bound to accept the revision and pass appropriate orders, but cannot say that the revision is not maintainable and reject the same.

6. Of course, it is left open to the revisional authority to pass any orders either allowing the revision or dismissing the revision on the ground of its maintainability, but rejection at the threshold is not one, which is expected from the revisional authority. The learned Standing Counsel strenuously contended before this Court saying that Section 12(G) provides for a further appeal to this Court and hence, this writ petition itself is not maintainable. According to him where hierarchy of appeals is provided for by the Statute, the party shall exhaust the statutory remedies before resorting to writ jurisdiction. There is absolutely no dispute about the provisions of law and the proposition made by the apex Court in **STAR PAPER MILLS LTD. v. STATE OF U.P.**[1], but the case on hand is entirely different and it is not against an order passed by the revisional authority under Section 12(F) of the Act and the proceedings dated 16-09-2000, which is impugned in this writ petition reads as follows---

> "It is hereby informed that the Appellate Authority is the Regional Joint Director of Marketing, Vijayawada under Section 12(E) of Markets Act, 1966. The assessment order issued by the Assessing Authority, the Secretary, AMC, Tanuku has to be preferred as an Appeal with the Joint Director of Marketing, Vijayawada.
> Therefore, M/s. Sree Ananthalakshmi Textiles (p) Ltd., are directed at first to prefer an Appeal with the Joint Director of Marketing, Vijayawada under Section 12(E) of the Markets Act, 1966, against the assessment order, instead of making Revision Petition in this office."

7. Hence, it cannot be said that the proceedings are one passed under Section 12(F) of the Act. Accordingly, this Court is of the view that the proceedings impugned in this writ petition is bad in law and accordingly the same is set aside and the authority is hereby directed to

number the revision and pass appropriate orders in accordance with law. As this Court while issuing *Rule nisi*, passed interim direction for payment of 50% of the amount assessed by the assessing authority, the same shall be continued during the pendency of the said revision.

8. With the above directions, the writ petition is allowed. No costs.

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JUSTICE GOPALAKRISHNA TAMADA

Dt.31-10-2007
GLV

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[1] (2006) 10 SCC 201